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97TH CONGRESS } HOUSE OF REPRESENTATIVES { REPORT
1st Session } { No. 97-237

COMPLETED

AMENDING SECTION 1 OF THE ACT OF JUNE 5, 1920, AS AMENDED, TO AUTHORIZE THE SECRETARY OF COMMERCE TO SETTLE CLAIMS FOR DAMAGES OF LESS THAN $2,500 ARISING BY REASON OF ACTS FOR WHICH THE NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION SHALL BE FOUND TO BE RESPONSIBLE

SEPTEMBER 22, 1981.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

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Mr. DANIELSON, from the Committee on the Judiciary submitted the following

REPORT

ORIGINAL

[To accompany H.R. 1029]

The Committee on the Judiciary, to whom was referred the bill (H.R. 1029) to amend section 1 of the Act of June 5, 1920, as amended, to authorize the Secretary of Commerce to settle claims for damages of less than $2,500 arising by reason of acts for which the National Oceanic and Atmospheric Administration shall be found to be responsible, having considered the same, reports favorably thereon with amendments and recommends that the bill as amended do pass.

The amendments are as follows:

Page 2, line 4: Strike "shall be found to be" and insert "is".

Amend the title to read:

> To amend section 1 of the Act of June 5, 1920, as amended, to authorize the Secretary of Commerce to settle claims for damages of less than $2,500 arising by reason of acts for which the National Oceanic and Atmospheric Administration is responsible.

PURPOSE

The purpose of the proposed legislation, as amended, is to amend section 1 of the Act of June 5, 1920, as amended, to authorize the Secretary of Commerce to settle claims for damages of less than $2,500 arising by reason of acts for which the National Oceanic and Atmospheric Administration is responsible.

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STATEMENT

The bill, H.R. 1029, was introduced as recommended by the Department of Commerce in a recommendation to the Congress dated July 6, 1977, and is identical to the bill, H.R. 234, in the 96th Congress, which was the subject of a favorable report by the Department to the committee dated June 9, 1980.

Under existing law, the Secretary of Commerce has the authority (under 33 U.S.C. 853) to settle claims up to $500 arising by reason of acts for which the National Ocean Survey (an agency of the National Oceanic and Atmospheric Administration) of the Department of Commerce shall be found to be responsible. This authority does not extend to a negligent or wrongful act or omission of a Government employee acting within the scope of his employment which would already be covered under the Federal Tort Claims Act (28 U.S.C. 2671–80). The purpose of H.R. 1029 is twofold: First, it would make clear that 33 U.S.C. 853 is applicable to all NOAA activities not merely to those of the National Ocean Survey. Second, it would increase the maximum dollar amount of authorized settlements from $500 to $2,500.

The bill, in increasing the dollar amount for authorized settlements from $500 to $2,500 will provide the authority to settle claims arising from the many diversified scientific endeavors and experiments of that Administration. As is pointed out in the material submitted to the committee by the Department, the settlements can be made where the claim arose from damage clearly caused by activities of the National Oceanic and Atmospheric Administration and the Government has a moral obligation to compensate the injury even though there may be an absence of negligence. The examples of such activities as described in the report of the Department of Commerce included weather instrument operations such as the radiosonde. This is a device that is sent into the atmosphere by balloon which, after reaching 5 or 6 miles in altitude, is returned to the ground by parachute. The radiosonde is a plastic cased instrument weighing about 3 pounds. In most instances, the instrument reaches the earth surface without incident, and many of them are recovered. As a free-falling object, however, there is a possibility that the instrument could frighten domestic animals, or have other effects such as colliding with vehicles.

It was also pointed out that during marine surveys, coastal hydrographic ships operate in areas where fishing occurs and, despite precautions, fishing nets, lobster pots, or other fishing gear may be damaged.

The National Earth Satellite Service of NOAA has command and data acquisition stations at Gilmore Creek, Alaska, and Wallops Island, Virginia. The launching of satellites for atmospheric observations from these stations is accomplished in collaboration with the National Aeronautics and Space Administration (NASA). However, NOAA personnel, facilities and equipments are involved. Satellite launchings always have the potential for damaging their operational sites and contiguous areas.

In addition to the foregoing, there may be damage to private property by triangulation and survey field parties. Most of the work of

such parties involves using privately owned land to which access is obtained by established procedures. A site may be used for several months and it is possible that damage could be done to the land and its appurtenances.

The committee recognizes that the existing language in section 853 of title 33 of the United States Code presently providing for the settlement of claims up to $500 has performed a valuable function over the years since enactment in 1920 to provide compensation to persons injured from activities similar to those outlined above. The increase of that authority to the amount of $2,500 is a realistic increase in view of current costs which can be expected in the event of damage claims. Further, the activities of the National Oceanic and Atmospheric Administration as exemplified by the examples outlined in this report and in the material appended to the report submitted by the Department, are of a unique nature and would give rise to claims which could be settled expeditiously under the authority provided in this bill.

It is recommended that the bill be considered favorably.

COST

(Rule XIII (7)(a)(1))

There is a potential for a limited amount of increase in claims payment by reason of the increase of the ceiling from $500 to $2,500, and the expansion of the authority to encompass all of the activities of the National Oceanic and Atmospheric Administration. However, the degree of increase is dependent upon the number of claims to be filed.

OVERSIGHT STATEMENT

(Rule XI (2)(1)(3)(A))

The Subcommittee on Administrative Law and Governmental Relations of this committee exercises the committee's oversight responsibility in accordance with rule VI(b) of the rules of the Committee on the Judiciary with reference to claims against the United States. That subcommittee has recommended the favorable consideration of the bill.

COMMITTEE VOTE

On September 15, 1981, the full Committee on the Judiciary approved the bill, H.R. 1029, by voice vote.

OVERSIGHT FINDINGS AND RECOMMENDATIONS OF THE COMMITTEE ON GOVERNMENT OPERATIONS

(Rule XI 2(1)(3)(D))

No findings or recommendations of the Committee on Government Operations were received as referred to in subdivision (D) of clause 2(1)(3) of House rule XI.

INFLATIONARY IMPACT

(Rule XI 2(1)(4))

In compliance with clause 2(1)(4) of House rule XI, it is stated that this legislation will have no inflationary impact on prices and costs on the operation of the national economy.

ESTIMATE OF THE CONGRESSIONAL BUDGET OFFICE

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, D.C. September 17, 1981.

Hon. PETER W. RODINO, JR.,
Chairman, Committee on the Judiciary, U.S. House of Representatives, Rayburn House Office Building, Washington, D.C.

DEAR MR. CHAIRMAN: Pursuant to Section 403 of the Congressional Budget Act of 1974, the Congressional Budget Office has reviewed H.R. 1029, a bill to amend section 1 of the Act of June 5, 1920, as amended, to authorize the Secretary of Commerce to settle claims for damages of less than $2,500 arising by reason of acts for which the National Oceanic and Atmospheric Administration is responsible, as ordered reported by the House Committee on the Judiciary, September 15, 1981.

Based on information from the Department of Commerce, it is expected that enactment of this legislation would require no changes in staffing levels and result in no significant costs or savings to the federal government.

Should the Committee so desire, we would be pleased to provide further details on this estimate.

Sincerely,

ALICE M. RIVLIN,
Director.

GENERAL COUNSEL OF THE
U.S. DEPARTMENT OF COMMERCE,
Washington, D.C., June 9, 1980.

Hon. PETER W. RODINO, JR.,
Chairman, Committee on the Judiciary,
House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: This is in response to your request for the views of the Department of Commerce on H.R. 234, a bill "To amend section 1 of the Act of June 5, 1920, as amended, to authorize the Secretary of Commerce to settle claims for damages of less than $2,500 arising by reason of acts for which the National Oceanic and Atmospheric Administration shall be found to be responsible."

H.R. 234 is a bill developed by our agency and sent to the Congress as an Administration proposal on July 6, 1977. It was reintroduced in the 96th Congress in its present form.

Under existing law, the Secretary of Commerce has the authority under 33 U.S.C. 853 to settle claims up to $500 arising by reason of acts for which the National Ocean Survey (an agency of the National Oceanic and Atmospheric Administration) of the Department of Commerce shall be found to be responsible. This authority does not extend to a negligent or wrongful act or a mission of a Government employee acting within the scope of his employment which would already be covered under the Federal Tort Claims Act (28 U.S.C. 2671–80). The purpose of H.R. 234 is twofold. First, it would make clear that 33 U.S.C. 853 is applicable to all NOAA activities not merely to those of the National Ocean Survey. Second, it would increase the maximum dollar amount of authorized settlements from $500 to $2500.

The Department of Commerce continues to support enactment of this legislation. We would suggest, however, that for purposes of clarity the bill be amended to read "the Secretary of Commerce is authorized to consider, ascertain, adjust, and determine all claims for damages, where the amount of the claim does not exceed $2500, occasioned, subsequent to June 5, 1920, by acts *not necessarily negligent*, but for which the National Oceanic and Atmospheric Administration shall be found to be responsible."

For further information, enclosed with this letter is a copy of the statement of purpose and need which accompanied our draft legislation when it was originally transmitted to Congress in 1977.

We have been advised by the Office of Management and Budget that they have no objection to the submission of our letter to the Congress from the standpoint of the Administration's program.

Sincerely,

HOMER E. MOYER, Jr.,
Acting General Counsel.

STATEMENT OF PURPOSE AND NEED

Under 33 U.S.C. 853 the Secretary of Commerce has the authority to settle claims of up to $500 arising by reason of acts for which the National Ocean Survey of the National Oceanic and Atmospheric Administration (NOAA) of the Department of Commerce shall be found to be responsible other than a negligent or wrongful act or omission of a Government employee acting within the scope of his employment (a claim arising by reason of a negligent or wrongful act or omission of a Government employee acting within the scope of his employment is covered under the Federal Tort Claims Act (28 U.S.C. 2671–80)).

The purpose of this legislation is twofold. First, it is to make clear that 33 U.S.C. 853 is applicable to all NOAA activities. In addition, the legislation is to increase the dollar amount of authorized settlements from $500 to $2,500. NOAA in its many diversified scientific endeavors and experiments often employs information gathering instruments that, on occasion, give cause to damage claims exceeding $500 where negligence in fact is absent but the moral obligation to compensate is present. The usual administrative procedure is to settle such claims under the Federal Tort Claims Act (which has no dollar

limitation) on the premise that color of negligence or omission can be found. Following this procedure is not satisfactory because such settlements establish undesirable precedents.

Some of the claims NOAA would seek to settle under such power are those arising from: (1) weather instrument operation such as the radiosonde which is sent into the atmosphere by balloon and after reaching 5 or 6 miles bursts and returns to ground by parachute; (2) marine torts in domestic and foreign waters especially tearing up of lobster and fish nets during surveys; (3) damage to private property by triangulation and survey field parties; and (4) damage caused by breakaway buoys. Enactment of this proposal will reduce administrative costs in many cases but would not require any increase in appropriations inasmuch as NOAA averages only two such claims per year.

U.S. DEPARTMENT OF COMMERCE,
NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION,
Washington, D.C., January 8, 1980.

Re. H.R. 234.

Mr. BILL SHATTUCK,
Subcommittee of Administrative Law and Government Operations, Washington, D.C.

DEAR MR. SHATTUCK: As a follow-up to our phome conversation of last week, I will attempt to expand on the information contained in the Statement of Purpose and Need which accompanied the bill.

The Federal Tort Claims Act (FTCA) was passed in 1946 and it provided for the first time general administrative and judicial remedies to those who suffer injury or damage as a result of the negligence or misconduct of employees of the United States Government. Prior to this time the only remedy available to the victims of Government negligence was to try to have a private claim bill introduced in Congress. There were, however, a number of specialized statutory authorities already allowing payment of claims for Government activities. These included, inter alia, the Suits in Admiralty Act (46 U.S.C. 741 *et seq.*) (1929), the Public Vessels Act (46 U.S.C. 781 *et seq.*) (1925), the Coast Guard Claims Act (14 U.S.C. 645) (1941), Administration of National Forests (16 U.S.C. 574) (1930), National Park Service (16 U.S.C. 17f) (1930), Claims Invoiving the FBI (31 U.S.C. 2241) (1934), the Military Claims Act (5. Stat. 372) (1943), and the Coast and Geodetic Survey (33 U.S.C. 853) (1920).

The FTCA was not intended to be a codification of these statutes. While it did supersede some of them. they were not all replaced and many remain on the books today. The last section of the FTCA contained both a repealing and savings clause. This section repealed all existing provisions of law authorizing any federal agency to adjust claims which are cognizable under the administrative settlement provisions of the Act. Provisions of law authorizing the adjustment of claims not cognizable under this portion of the FTCA remained unaffected as to such claims. This section is 424 of the Legislative Reorganization Act, 60 Stat. 846, and is not set forth in the United States Code today. Since the FTCA provided a remedy only as a result of a "negligent or wrongful act or omission", it did not repeal

33 U.S.C. 853, the Coast and Geodetic Survey claims authority, because under this authority one only need show an act "for which the Coast and Geodetic Survey shall be found to be responsible." Only those negligent or wrongful acts for which the Coast and Geodetic Survey was responsible were no longer within the purview of 33 U.S.C. 853. Other acts which caused damage or injury, but where there was no negligent or wrongful act, remained and still remain cognizable.

Examples of the different types of claims cognizable under the FTCA received by NOAA today would be damage or injury caused by automobile accidents, defects or dangerous conditions on NOAA property, or negligent weather forecasting, to name a few. There are certain activities, however, which, while damages may result thereform, cannot really be considered negligent or wrongful. Some of these, such as the operation of weather instruments and satellites, damage from triangulation stations, and cloud seeding, were mentioned in the Statement of Purpose. In the past we have had to settle such claims in excess of $500 by finding a color of negligence under the FTCA. Findings of this sort are difficult to reach. Defining the launching of a radiosonde as a "wrongful act", as has been done in the past, is stretching the intent of the law. Also, in areas of this sort and with such experimental programs as cloudseeding, to have to define these activities in terms of negligence sets undersirable precedents. The increase in settlement authority to $2,500.00 will allow us to settle if appropriate, almost every claim of this sort received where we believe we have a moral obligation to do so. It is important that we be able to compensate members of the public for damage done even though negligence was not involved.

As mentioned earlier, other comparable statutes have been in existence for years. NASA has a similar statute [42 U.S.C. 2473(b)(13)] which allows it "to consider, ascertain, adjust, determine, settle, and pay . . . any claim for $5,000.00 or less against the United States for bodily injury, death, or damage to or loss of real or personal property resulting from the conduct of the Administration's functions. . .". No negligent or wrongful act is needed to pay such a claim. Similarly, the Military Claims Act (10 U.S.C. 2733) provides an administrative remedy of $25,000.00 for claims for property damage, personal injury, or death caused as an incident to the noncombat activities of the military departments. The claimant need not show negligence, wrong, or fault. All that is needed, as in 33 U.S.C. 853, is a showing of causation and damages. What we are proposing to do, as these other statutes have done throughout the years, is simply increase the dollar limit of 33 U.S.C. 853 to the more appropriate level of $2,500.00, considering that the existing limit of $500 was established in 1920.

As you know, the Coast and Geodetic Survey was absorbed into ESSA and later its functions were assumed by the National Ocean Survey within NOAA. The authority of the Director, Coast and Geodetic Survey, under 33 U.S.C. 853 was assumed by the Secretary of Commerce and in turn delegated to the Administrator of NOAA. However, the law still refers to the functions of the Coast and Geodetic Survey and we want to make it clear that the law refers to all NOAA

activities, and not just those exercised by the National Ocean Survey. No other comparable claims act restricts itself to one segment of an agency's activities. While we have had no problem in this regard in the past, since the statute was being amended we felt it appropriate to update its language as well.

The mechanics of the claims process under 33 U.S.C. 853 will remain the same as it has been, which is similar to what we do with FTCA claims. The claimant submits a Standard Form 95 with documentation and if the claim is approved we have him sign a voucher and then payment is authorized. Increasing the limit to $2,500 will not require any increase in appropriations or cause any administrative burden since 33 U.S.C. 853 claims are relatively infrequent.

Please let me know if I can provide additional information concerning this matter. I can be reached on 254–8350.

Sincerely,

M. TIMOTHY CONNER,
Staff Attorney.

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